

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 888

Introduced by Friend, 10; Brown, 6; Combs, 32; Connealy, 16;
Hartnett, 45; Janssen, 15; Schimek, 27

Read first time January 7, 2004

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to energy codes; to amend sections 71-6406,
2 72-804 to 72-806, 81-1608, 81-1613 to 81-1615, 81-1617,
3 81-1618, 81-1620, 81-1622, and 81-1625, Reissue Revised
4 Statutes of Nebraska, and sections 81-1609, 81-1611, and
5 81-1616, Revised Statutes Supplement, 2002; to change and
6 harmonize provisions relating to state and local energy
7 codes and standards; to provide operative dates; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-6406, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-6406. (1) Any political subdivision may enact,
4 administer, or enforce a local building or construction code if or
5 as long as such political subdivision adopts the state building
6 code. The political subdivision shall regularly update its code.
7 For purposes of this section, a code shall be deemed to be
8 regularly updated if the most recent edition is adopted by the
9 political subdivision within two years after the publication date
10 of the edition. No political subdivision may adopt or enforce a
11 local building or construction code other than as provided by this
12 section.

13 (2) A political subdivision may amend its local building
14 or construction code if the amendment:

15 (a) Conforms generally with the state building code;

16 (b) Adopts a special or differing building standard to
17 reduce unnecessary costs of construction, increase safety,
18 durability, or efficiency, or address special local conditions
19 within its jurisdiction if such variation does not reduce energy
20 efficiency; or

21 (c) Adopts any supplement, new edition, or appendix.

22 (3) A political subdivision may adopt and promulgate
23 amendments for the proper administration and enforcement of its
24 local building or construction code including organization of
25 enforcement, qualifications of staff members, examination of plans,
26 inspections, appeals, permits, and fees. Any amendment adopted
27 pursuant to this section shall be published separately from the
28 local building or construction code. Fees, if any, for services

1 which monitor a builder's application of codes shall be negotiable
2 between the political subdivisions involved, but such fees shall
3 not exceed the actual expenses incurred by the political
4 subdivision doing the monitoring.

5 (4) Notwithstanding the provisions of the Building
6 Construction Act, a public building of a political subdivision
7 shall be built in accordance with the applicable local building or
8 construction code.

9 Sec. 2. Section 72-804, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 72-804. (1) Any new state building shall meet or exceed
12 the requirements of the ~~2000~~ 2003 International Energy Conservation
13 Code.

14 (2) Any new lighting, heating, cooling, ventilating, or
15 water heating equipment or controls in a state-owned building and
16 any new building envelope components installed in a state-owned
17 building shall meet or exceed the requirements of the ~~2000~~ 2003
18 International Energy Conservation Code.

19 (3) The State Building Administrator of the Department of
20 Administrative Services, in consultation with the State Energy
21 Office, may specify:

22 (a) A more recent edition of the International Energy
23 Conservation Code;

24 (b) Additional energy efficiency or renewable energy
25 requirements for buildings; and

26 (c) Waivers of specific requirements which are
27 demonstrated through life-cycle cost analysis to not be in the
28 state's best interest. The agency receiving the funding shall be

1 required to provide a life-cycle cost analysis to the State
2 Building Administrator.

3 Sec. 3. Section 72-805, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 72-805. The 2003 International Energy Conservation Code
6 applies to all new buildings constructed in whole or in part with
7 state funds after ~~January 1, 2000~~ July 1, 2005. The State Energy
8 Office shall review building plans and specifications necessary to
9 determine whether a building will meet the requirements of this
10 section. The State Energy Office shall provide a copy of its
11 review to the agency receiving funding. The agency receiving the
12 funding shall verify that the building as constructed meets or
13 exceeds the code. The verification shall be provided to the State
14 Energy Office. The State Energy Office shall, in consultation with
15 the State Building Administrator of the Department of
16 Administrative Services, adopt and promulgate rules and regulations
17 to carry out this section.

18 Sec. 4. Section 72-806, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 72-806. The enforcement provisions of Chapter 1 of the
21 ~~2000~~ 2003 International Energy Conservation Code shall not apply to
22 buildings subject to ~~sections 72-804 and 72-805~~ section 72-804.

23 Sec. 5. Section 81-1608, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-1608. The Legislature finds that ~~there is a present~~
26 ~~and continuing need to provide for the development and~~
27 ~~implementation of minimum statewide lighting and thermal efficiency~~
28 ~~standards for buildings, to insure coordination with federal policy~~

1 under the Energy Conservation Standards for New Buildings Act of
2 1976, to promote the conservation of our dwindling energy
3 resources, and to provide for the public health, safety, and
4 welfare Nebraska consumers have an expectation that the newly built
5 houses or buildings they buy meet uniform energy efficiency
6 standards. Therefor, the Legislature finds that there is a need to
7 adopt the 2003 International Energy Conservation Code in order to
8 ensure that a minimum energy efficiency standard is maintained
9 throughout the state, to harmonize and clarify energy building code
10 statutory references, to ensure compliance with the National Energy
11 Policy Act of 1992, to increase energy savings for all Nebraska
12 consumers, especially low-income Nebraskans, to reduce the cost of
13 state programs that provide assistance to low-income Nebraskans, to
14 reduce the amount of money leaving the state to pay for imported
15 energy, to reduce the growth of energy consumption, to lessen the
16 need for new power plants, and to provide training for local code
17 officials and residential and commercial builders who implement the
18 2003 International Energy Conservation Code.

19 Sec. 6. Section 81-1609, Revised Statutes Supplement,
20 2002, is amended to read:

21 81-1609. As used in sections 81-1608 to 81-1626, unless
22 the context otherwise requires:

23 (1) Office shall mean the State Energy Office;

24 (2) Contractor shall mean the person or entity
25 responsible for the overall construction of any building or the
26 installation of any component which affects the energy efficiency
27 of the building;

28 (3) Architect or engineer shall mean any person licensed

1 as an architect or professional engineer under the Engineers and
2 Architects Regulation Act;

3 (4) Building shall mean any new structure, renovated
4 building, or addition which provides facilities or shelter for
5 public assembly, educational, business, mercantile, institutional,
6 warehouse, or residential occupancies, as well as those portions of
7 factory and industrial facilities which are used primarily for
8 human occupancy, such as office space, but not including any
9 structure which has a consumption of traditional energy sources for
10 all purposes not exceeding the energy equivalent of one watt per
11 square foot;

12 (5) Residential building shall mean a building three
13 stories or less that is used primarily as one or more dwelling
14 units;

15 (6) Renovation shall mean alterations on an existing
16 building which will cost more than fifty percent of the replacement
17 cost of such building at the time work is commenced or which was
18 not previously heated or cooled, for which a heating or cooling
19 system is now proposed, except that the restoration of historical
20 buildings shall not be included;

21 (7) Addition shall mean ~~any construction added to an~~
22 ~~existing building which will increase the floor area of that~~
23 ~~building by five percent or more~~ an extension or increase in the
24 height, conditioned floor area, or conditioned volume of a building
25 or structure;

26 (8) Floor area shall mean the total area of the floor or
27 floors of a building, expressed in square feet, which is within the
28 exterior faces of the shell of the structure which is heated or

1 cooled;

2 (9) ~~Nebraska Building Energy Conservation Standard shall~~
3 ~~mean the Model Energy Code, 1983 Edition, of the Council of~~
4 ~~American Building Officials Energy Code shall mean the 2003~~
5 ~~International Energy Conservation Code; and~~

6 (10) Traditional energy sources shall mean electricity,
7 petroleum-based fuels, uranium, coal, and all nonrenewable forms of
8 energy.

9 Sec. 7. Section 81-1611, Revised Statutes Supplement,
10 2002, is amended to read:

11 81-1611. The Legislature hereby adopts the ~~Model Energy~~
12 ~~Code, 1983 Edition, of the Council of American Building Officials~~
13 ~~as the Nebraska Building Energy Conservation Standard~~ 2003
14 International Energy Conservation Code as the Nebraska Energy Code.

15 The State Energy Office may adopt regulations specifying
16 alternative standards for building systems, techniques, equipment
17 designs, or building materials that will be considered equivalent
18 to the Nebraska ~~Building Energy Conservation Standard~~ Energy Code.
19 Regulations specifying alternative standards may be found
20 equivalent to the Nebraska Energy Code ~~Building Energy Conservation~~
21 ~~Standard~~ and may be approved for general or limited use if the use
22 of such alternative standards would not result in energy
23 consumption greater than would result from the strict application
24 of the Nebraska ~~Building Energy Conservation Standard~~ Energy Code.

25 Sec. 8. Section 81-1613, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 81-1613. The State Energy Office shall produce manuals
28 for use by architects, engineers, prime contractors, and owners.

1 The manuals shall be furnished upon request at a price sufficient
2 to cover the costs of production. The manuals shall contain, but
3 not be limited to:

4 (1) The Nebraska ~~Building Energy Conservation Standard~~
5 Energy Code;

6 (2) Forms, charts, tables, and other data to assist
7 architects, engineers, and prime contractors in meeting the
8 Nebraska ~~Building Energy Conservation Standard~~ Energy Code; and

9 (3) Any other information which the office finds will
10 assist local code officials in enforcing the ~~standards~~ code.

11 Sec. 9. Section 81-1614, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-1614. The Nebraska ~~Building Energy Conservation~~
14 ~~Standard~~ Energy Code shall apply to all new buildings, or
15 renovations of or additions to any existing buildings, on which
16 construction is initiated on or after ~~August 26, 1983~~ July 1, 2005.

17 Sec. 10. Section 81-1615, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 81-1615. ~~(1)~~ The following shall be exempt from sections
20 81-1608 to 81-1626:

21 ~~(a)~~ (1) Any building which has a peak design rate of
22 energy usage for all purposes of less than one watt, or three and
23 four-tenths British Thermal Units per hour, per square foot of
24 floor area;

25 ~~(b)~~ (2) Any building which is neither heated nor cooled;

26 ~~(c)~~ (3) Any building or portion thereof which is owned by
27 the United States of America;

28 ~~(d)~~ (4) Any manufactured home as defined by section

1 71-4603;

2 ~~(e)~~ (5) Any modular housing unit as defined by subsection
3 (1) of section 71-1557; and

4 ~~(f)~~ (6) Any building ~~(i)~~ (a) listed on the National
5 Register of Historic Places, ~~(ii)~~ (b) determined to be eligible for
6 the National Register of Historic Places by the State Historic
7 Preservation Officer, or ~~(iii)~~ (c) designated as an individual
8 landmark or heritage preservation site by a municipality or located
9 within a designated landmark or heritage preservation district. ~~+~~
10 and

11 ~~(g) Any building to be renovated that is located within~~
12 ~~an area that has been designated blighted by a municipality.~~

13 ~~(2) All residential buildings shall be exempt from~~
14 ~~lighting efficiency standards.~~

15 Sec. 11. Section 81-1616, Revised Statutes Supplement,
16 2002, is amended to read:

17 81-1616. For purposes of insuring compliance with
18 section 81-1614:

19 (1) The office, or its authorized agent, may conduct such
20 inspections and investigations as are necessary to make a
21 determination pursuant to section 81-1625 and may issue an order
22 containing and resulting from the findings of such inspections and
23 investigations; and

24 (2) A building owner may submit a written request that
25 the office undertake a determination pursuant to subdivision (1) of
26 this section. Such request shall include a list of reasons why the
27 building owner believes such a determination is necessary.

28 A building owner aggrieved by the office's determination,

1 or refusal to make such determination, may appeal such
2 determination or refusal as provided in the Administrative
3 Procedure Act.

4 The office may charge an amount sufficient to recover the
5 costs of providing such determinations.

6 Buildings located in a county, city, or village which has
7 adopted the Nebraska ~~Building Energy Conservation Standard~~ Energy
8 Code or equivalent ~~standard~~ code pursuant to section 81-1618, and
9 constructed after the adoption of such ~~standard~~ code, shall be
10 exempt from the provisions of this section.

11 Sec. 12. Section 81-1617, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-1617. The State Energy Office and any local code
14 authority may conduct inspections and investigations necessary to
15 enforce the Nebraska ~~Building Energy Conservation Standard~~ Energy
16 Code or equivalent ~~standard~~ code and may, at reasonable hours,
17 enter into any building and upon any premises within its
18 jurisdiction for the purpose of examination to determine compliance
19 with sections 81-1608 to 81-1626. Inspections shall be conducted
20 only after permission has been granted by the owner or occupant or
21 after a warrant has been issued pursuant to sections 29-830 to
22 29-835.

23 Sec. 13. Section 81-1618, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-1618. Any county, city, or village may adopt and
26 enforce a lighting and thermal efficiency ordinance, resolution,
27 code, or standard. Such ordinance, resolution, code, or standard
28 shall be considered equivalent to the Nebraska ~~Building Energy~~

1 ~~Conservation Standard Energy Code~~ if it would not result in energy
2 consumption greater than would result from the strict application
3 of the Nebraska ~~Building Energy Conservation Standard~~ Energy Code
4 and is reasonably consistent with the intent of sections 81-1608 to
5 81-1626. Any building or portion thereof subject to the
6 jurisdiction of, and inspected by such county, city, or village
7 shall be deemed to comply with sections 81-1608 to 81-1626 if it
8 meets the standards of such ordinance, resolution, code, or
9 standards. Such county, city, or village may by ordinance or
10 resolution prescribe a schedule of fees sufficient to pay the costs
11 incurred pursuant to sections 81-1608 to 81-1626.

12 Any county, city, or village which adopts and enforces a
13 lighting and thermal efficiency ordinance, resolution, code, or
14 standard may waive a specific requirement of the Nebraska Energy
15 Code when meeting that requirement is not economically justified as
16 shown by a life-cycle cost analysis. The life-cycle cost analysis
17 must demonstrate that the present value of the estimated energy
18 cost savings over the life of the building, or specific component,
19 is less than the incremental cost of compliance with the Nebraska
20 Energy Code. The calculation of present value must be based on
21 expected incremental utility costs, an appropriate discount rate,
22 and the most recent edition of Energy Prices Indices and Discount
23 Factors for Life-Cycle Cost Analysis (NISTIR 85-3273). Such
24 analysis must be submitted to the State Energy Office. If the
25 analysis shows that the code requirement is not economically
26 justified, the State Energy Office shall waive that specific
27 requirement.

28 Sec. 14. Section 81-1620, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-1620. The State Energy Office shall establish a
3 continuing program of technical assistance to ~~any county, city, or~~
4 ~~village which adopts and enforces or is considering adopting and~~
5 ~~enforcing the Nebraska Building Energy Conservation Standard or~~
6 ~~equivalent standard~~ local code officials and residential and
7 commercial builders. The program shall include the training of
8 local code officials in building technology and local enforcement
9 procedure related to ~~lighting and thermal efficiency standards,~~
10 implementation of the Nebraska Energy Code and the development of
11 training programs suitable for presentation by local governments,
12 educational institutions, and other public or private entities.

13 Sec. 15. Section 81-1622, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 81-1622. Prior to the construction, renovation, or
16 addition to any existing building after the dates specified in
17 section 81-1614 the following requirements shall be met where a
18 county, city, or village has not adopted an ordinance, resolution,
19 code, or standard pursuant to section 81-1618:

20 (1) When no architect or engineer is retained, the prime
21 contractor shall build or cause to be built, to the best of his or
22 her knowledge, according to the Nebraska ~~Building Energy~~
23 ~~Conservation Standard~~ Energy Code; and

24 (2) When an architect or engineer is retained: (a) The
25 architect or engineer shall place his or her state registration
26 seal on all construction drawings which shall indicate that the
27 design meets the Nebraska ~~Building Energy Conservation Standard~~
28 Energy Code and (b) the prime contractor responsible for the actual

1 construction shall build or cause to be built in accordance with
2 the construction documents prepared by the architect or engineer.

3 Sec. 16. Section 81-1625, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-1625. If the Director of the State Energy Office or
6 the local code authority finds, within two years from the date a
7 building is first occupied, that the building, at the time of
8 construction, did not comply with the Nebraska ~~Building Energy~~
9 ~~Conservation Standard~~ Energy Code or equivalent ~~standard code~~
10 adopted by a county, city, or village in effect at such time, the
11 director or code authority may order the owner or prime contractor
12 to take those actions necessary to bring the building into
13 compliance. This section does not limit the right of the owner to
14 bring civil action against the contractor, architect, or engineer
15 for the cost of bringing the building into compliance.

16 Sec. 17. Sections 1 to 13, 15, 16, and 18 of this act
17 become operative on July 1, 2005. The other sections of this act
18 become operative on their effective date.

19 Sec. 18. Original sections 71-6406, 72-804 to 72-806,
20 81-1608, 81-1613 to 81-1615, 81-1617, 81-1618, 81-1622, and
21 81-1625, Reissue Revised Statutes of Nebraska, and sections
22 81-1609, 81-1611, and 81-1616, Revised Statutes Supplement, 2002,
23 are repealed.

24 Sec. 19. Original section 81-1620, Reissue Revised
25 Statutes of Nebraska, is repealed.